

REED SMITH SHAW & McCLAY

DOCKET FILE COPY ORIGINAL

FAX 202-457-6113
TELEX NO. 64711

1200 18TH STREET, N.W.
WASHINGTON, D.C. 20036
202-457-6100

WRITER'S DIRECT DIAL NUMBER

PITTSBURGH, PA
PHILADELPHIA, PA
HARRISBURG, PA
McLEAN, VA

(202) 457-8950

RECEIVED

March 19, 1993

MAR 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20054

Re: Intellicall, Inc. Comments in Response
to Petitions for Reconsideration
Docket No. 92-77

Dear Ms. Searcy:

Transmitted herewith on behalf of Intellicall, Inc.
are an original and four (4) copies of its Comments in Response
to Petitions for Reconsideration in the above-referenced
proceeding.

Should any questions arise in connection with this
filing, kindly contact the undersigned counsel directly. Thank
you for your attention to this matter.

Sincerely yours,


Lynn E. Shapiro

LES/tli
Enclosures

No. of Copies rec'd
List A B C D E

344

DOCKET FILE COPY ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

MAR 19 1993

In the Matter of
Billed Party Preference
for 0+ InterLATA Calls

)
)
)
)

CC Docket No. 92-77

Phase I

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS IN RESPONSE TO
PETITIONS FOR RECONSIDERATION

Intellicall, Inc. ("Intellicall"), by its attorneys and pursuant to Section 1.4(b)(1) of the Commission's Rules, hereby submits its Comments in Response to Petitions for Reconsideration in the above-captioned proceeding and states the following:

I. INTRODUCTION

In its November 6, 1992 Order ("CIID Card Order") in this proceeding, the Commission decided to permit AT&T to continue to discriminate in favor of LECs by allowing them to validate the AT&T CIID card while denying that ability to all other carriers, including private pay telephone ("PPT") providers. The Commission also determined that customer confusion resulting from AT&T's misleading AT&T marketing efforts could be corrected through remedial marketing, which AT&T was directed to undertake. In taking these actions, the FCC rejected the request of Intellicall

and others that the FCC adopt a "0+ public domain" policy. Under
that policy, any carrier issuing a calling card would be required

to place a 0+ interLATA call. This interLATA call could not be completed on a 0+ basis, and the caller would have no explanation for why he or she could complete the first call, but not the second. Finally, if a consumer followed AT&T's instructions and dialed an access code to complete an intraLATA call at a telephone not presubscribed to AT&T the result could be the routing of this intraLATA call to AT&T in violation of state regulations prohibiting IXCs from handling such calls.

B. Expanding Dialing Instructions To Include LECs Worsens Competitive Harm and Customer Confusion.

As described in VAC's and LDDS' Petition for Reconsideration, allowing LECs to validate these intraLATA calls while precluding other carriers from doing so violates Section 202 of the Communications Act.¹ See VAC Petition for Reconsideration at 2; LDDS Petition for Reconsideration at 1013. Since at most payphone locations, local and intraLATA calls constitute the majority of 0+ traffic, LECs can earn substantial revenues from CIID card calls simply not available to their PPT competitors. As a result of this artificial and discriminatory market dislocation, LECs can offer higher commissions to location owners in return for the right to locate payphones on their premises, in many instances in an effort to displace PPT payphones. This substantial and

¹ Where, as here, intrastate activities result in competitive harm to the interstate market, the Commission has jurisdictional authority to take note of such activities and respond accordingly. See Conway v. Fed'l Power Comm'n, 510 F.2d 1264, 1272 (1976).

unwarranted competitive advantage in the pay telephone market results solely from AT&T's discriminatory CIID card practices and ultimately harms consumers by thwarting pay telephone competition. This practice must cease.

The harm resulting from AT&T's CIID card practices will be exacerbated if the Commission grants SWBT's request to amend AT&T's dialing instructions. In an effort to capitalize on the competitive advantage the MHAs provide LECs, SWBT requests that, rather than check the telephone for AT&T signage as AT&T instructs, callers listen for the brand of either AT&T or a LEC² and, if heard, complete their call using their CIID card. This proposal presumes a consumer base more knowledgeable about the telephone regulatory structure than many communications lawyers. First, the vast majority of callers are not familiar with the intraLATA-interLATA dichotomy, designed purely for regulatory purposes. Thus, any instruction that CIID cards can be used for intraLATA calls regardless of whether the telephone is presubscribed to AT&T would be meaningless and would serve only to further confuse consumers.

Second, SWBT's proposal that consumers be instructed to listen for the AT&T or LEC brand presumes that callers are familiar with the names of all LECs and would recognize a company name as a LEC rather than an interexchange carrier ("IXC"). This

² In some cases, LECs may not brand operator service calls resulting in further consumer confusion as caller will have no way of knowing whether their call can be completed on a 0+ basis.

might be the case. For example, it is more likely that a

person who is a member of a group will be more likely to

be a member of a group than a person who is not a member

of a group. For example, it is more likely that a person

who is a member of a group will be more likely to be a

member of a group than a person who is not a member

of a group. For example, it is more likely that a person

who is a member of a group will be more likely to be a

member of a group than a person who is not a member

of a group. For example, it is more likely that a person

who is a member of a group will be more likely to be a

member of a group than a person who is not a member

of a group. For example, it is more likely that a person

who is a member of a group will be more likely to be a

member of a group than a person who is not a member

of a group. For example, it is more likely that a person

who is a member of a group will be more likely to be a

member of a group than a person who is not a member

of a group. For example, it is more likely that a person

who is a member of a group will be more likely to be a

member of a group than a person who is not a member

of a group. For example, it is more likely that a person

who is a member of a group will be more likely to be a

member of a group than a person who is not a member

of a group. For example, it is more likely that a person

who is a member of a group will be more likely to be a

chooses not to make such access available, the Communications Act requires that AT&T cease its discriminatory practice of making such validation information available only to LECs, and that its CIID card then be used as a true "proprietary" card, with access to AT&T's network through its access code. See 47 U.S.C. § 202. The slight inconvenience associated with dialing such an access code is far outweighed by the resulting competitive equities and the end to the chaos that AT&T's CIID card practices have caused consumers and the industry to date.⁴

IV. CONCLUSION

For the reasons stated above and those contained in the Petitions for Reconsideration of PhoneTel, LDDS, Polar, VAC, CompTel and ITI, Intellicall respectfully requests that the Commission reconsider its CIID Card Order and adopt a 0+ Public

Continued from previous page

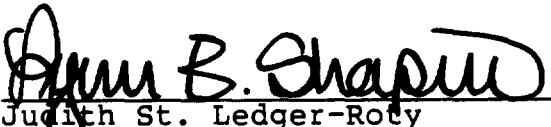
access codes. See Pub. L. No. 101-435, 104 Stat. 986 (1990), codified at 47 U.S.C. § 226; Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 2744 (1991); Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 6 FCC Rcd 4736 (1991).

- ⁴ The inconvenience of access code dialing has not stopped the millions of customers who use non-AT&T calling cards, e.g., MCI and Sprint, to access the carrier of their choice. There is no evidence that AT&T customers would not also use such an access code to reach AT&T. In fact, AT&T has recognized the limitations associated with its CIID card and has initiated a "proprietary service," Teletravel, that is access by dialing an "800" number followed by an access code. This proprietary service is, in most respects, identical to proprietary calling cards such as those provided by MCI and Sprint.

Domain policy requiring AT&T to open its validation database to all carriers, or require AT&T to use its proprietary CIID card in conjunction with an access code. Further, Intellicall requests that the Commission deny SWBT's Petition for Reconsideration.

Respectfully submitted,

INTELLICALL, INC.

By: 
Judith St. Ledger-Roty
Michael R. Wack
Lynn E. Shapiro

Its Attorneys

REED SMITH SHAW & McCLAY
1200 18th Street, N.W.
Washington, D.C. 20036
(202) 457-8950

Dated: March 19, 1993

CERTIFICATE OF SERVICE

I, Tracy L. Irvin, hereby certify that a copy of the foregoing Comments in Response to Petitions for Reconsideration was delivered by U.S. mail, first class, postage prepaid, this 19th day of March, 1993 to the parties on the attached service list.


Tracy L. Irvin